

FIRST REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 199

97TH GENERAL ASSEMBLY

0685H.04P

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 115.003, 115.005, 115.007, 115.249, 115.259, 115.281, 115.299, 115.300, 115.383, 115.419, 115.423, 115.433, 115.436, 115.439, 115.449, 115.455, 115.456, and 115.493, RSMo, and to enact in lieu thereof eighteen new sections relating to elections.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 115.003, 115.005, 115.007, 115.249, 115.259, 115.281, 115.299, 115.300, 115.383, 115.419, 115.423, 115.433, 115.436, 115.439, 115.449, 115.455, 115.456, and 115.493, RSMo, are repealed and eighteen new sections enacted in lieu thereof, to be known as sections 115.003, 115.005, 115.007, 115.249, 115.259, 115.281, 115.299, 115.300, 115.383, 115.419, 115.423, 115.433, 115.436, 115.439, 115.449, 115.455, 115.456, and 115.493, to read as follows:

115.003. The purpose of sections 115.001 to 115.[641] **801** [and sections 51.450 and 51.460] is to simplify, clarify and harmonize the laws governing elections. It shall be construed and applied so as to accomplish its purpose.

115.005. Notwithstanding any other provision of law to the contrary, sections 115.001 to 115.[641] **801** shall apply to all public elections in the state, except elections for which ownership of real property is required by law for voting.

115.007. No part of sections 115.001 to 115.[641] **801** [and sections 51.450 and 51.460] shall be construed as impliedly amended or repealed by subsequent legislation if such construction can be reasonably avoided.

115.249. No voting machine shall be used unless it:

(1) Permits voting in absolute secrecy;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

3 (2) Permits each voter to vote for as many candidates for each office as he is lawfully
4 entitled to vote for, and no other;

5 (3) Permits each voter to vote for or against as many questions as he is lawfully entitled
6 to vote on, and no more;

7 (4) Provides facilities for each voter to cast as many write-in votes for each office as he
8 is lawfully entitled to cast;

9 (5) Permits each voter in a primary election to vote for the candidates of only one party
10 announced by the voter in advance;

11 [(6) Permits each voter at a presidential election to vote by use of a single lever for the
12 candidates of one party or group of petitioners for president, vice president and their presidential
13 electors;

14 (7)] (6) Correctly registers or records and accurately counts all votes cast for each
15 candidate and for and against each question;

16 [(8)] (7) Is provided with a lock or locks which prevent any movement of the voting or
17 registering mechanism and any tampering with the mechanism;

18 [(9)] (8) Is provided with a protective counter or other device whereby any operation of
19 the machine before or after an election will be detected;

20 [(10)] (9) Is provided with a counter which shows at all times during the election how
21 many people have voted on the machine;

22 [(11)] (10) Is provided with a proper light which enables each voter, while voting, to
23 clearly see the ballot labels[;

24 (12) Is provided with a mechanical model, illustrating the manner of voting on the
25 machine, suitable for the instruction of voters].

115.259. At each polling place using voting machines, the exterior of the voting
2 machines shall be in plain view of the election judges. [Each voting machine shall be so placed
3 that, unless its construction requires otherwise, the ballot labels can be plainly seen by the
4 election judges when not in use by voters.] The election judges shall not be nor permit any other
5 person to be in any position, or near any position, that enables them to see how any voter votes
6 or has voted. The election judges may inspect any machine as necessary to make sure the ballot
7 label is in its proper place and that the machine has not been damaged.

115.281. 1. Except as provided in subsection 3 of this section, not later than the sixth
2 Tuesday prior to each election, or within fourteen days after candidates' names or questions are
3 certified pursuant to section 115.125, the election authority shall cause to have printed and made
4 available a sufficient quantity of absentee ballots, ballot envelopes and mailing envelopes. As
5 soon as possible after the proper officer calls a special state or county election, the election

6 authority shall cause to have printed and made available a sufficient quantity of absentee ballots,
7 ballot envelopes and mailing envelopes.

8 2. All absentee ballots for an election shall be in the same form as the official ballots for
9 the election[, except that in lieu of the words "Official Ballot" at the top of the ballot, the words
10 "Official Absentee Ballot" shall appear].

11 3. Not later than forty-five days before each general, primary, and special election for
12 federal office, the election authority shall cause to have printed and made available a sufficient
13 quantity of absentee ballots, ballot envelopes, and mailing envelopes for absent uniformed
14 services voters and overseas voters and shall begin transmitting such ballots to absent uniformed
15 services and overseas voters who have submitted an absentee ballot application.

115.299. 1. To count absentee votes on election day, the election authority shall appoint
2 a sufficient number of teams of election judges **comprised of an equal number of judges** [.
3 Each team shall consist of four judges, two] from each major political party.

4 2. The teams so appointed shall meet on election day after the time fixed by law for the
5 opening of the polls at a central location designated by the election authority. The election
6 authority shall deliver the absentee ballots to the teams, and shall maintain a record of the
7 delivery. The record shall include the number of ballots delivered to each team and shall include
8 a signed receipt from two judges, one from each major political party. The election authority
9 shall provide each team with a ballot box, tally sheets and statements of returns as are provided
10 to a polling place.

11 3. Each team shall count votes on all absentee ballots designated by the election
12 authority.

13 4. One member of each team, closely observed by another member of the team from a
14 different political party, shall open each envelope and call the voter's name in a clear voice.
15 Without unfolding the ballot, two team members, one from each major political party, shall
16 initial the ballot, and an election judge shall place the ballot, still folded, in a ballot box. No
17 ballot box shall be opened until all of the ballots a team is counting have been placed in the box.
18 The votes shall be tallied and the returns made as provided in sections 115.447 to 115.525 for
19 paper ballots. After the votes on all ballots assigned to a team have been counted, the ballots and
20 ballot envelopes shall be placed on a string and enclosed in sealed containers marked "voted
21 absentee ballots and ballot envelopes from the election held, 20....". All rejected
22 absentee ballots and envelopes shall be enclosed and sealed in a separate container marked
23 "rejected absentee ballots and envelopes from the election held, 20....". On the
24 outside of each voted ballot and rejected ballot container, each member of the team shall write
25 his name, and all such containers shall be returned to the election authority. Upon receipt of the

26 returns and ballots, the election authority shall tabulate the absentee vote along with the votes
27 certified from each polling place in its jurisdiction.

115.300. In each jurisdiction, the election authority may start, not earlier than the fifth
2 day prior to the election, the preparation of absentee ballots for tabulation on the election day.
3 The election authority shall give notice to the county chairman of each major political party
4 forty-eight hours prior to beginning preparation of absentee ballot envelopes. Absentee ballot
5 preparation shall be completed by teams of election authority employees or teams of election
6 judges, with each team consisting of one member from each major political party. [Absentee
7 ballots shall not be counted by the same persons as those who removed such ballots from their
8 envelopes.]

115.383. Any election authority duly notified that a name is to be removed from the
2 ballot or that a new candidate has been selected shall have the proper corrections made on the
3 ballot before the ballot is delivered to or while it is in the hands of the printer. [If time does not
4 permit correction of the printed ballot, the election authority shall have prepared small pasters,
5 suitable for covering the name to be removed on the ballots, ballot labels or on the protective
6 covering of each voting machine. If a candidate is replaced by a candidate pursuant to the
7 provisions of sections 115.361 to 115.377, the paster shall contain the name to be substituted in
8 letters of the same size and type as all other names on the ballot. The appropriate election
9 authorities shall see that such pasters are properly applied to the ballots, ballot labels or voting
10 machines before they are used for voting.]

115.419. Before the time fixed by law for the opening of the polls, the election authority
2 shall deliver to each polling place a sufficient number of sample ballots[, and ballot cards [or
3 ballot labels] which shall be a different color but otherwise exact copies of the official ballot.
4 The samples shall be printed in the form of a diagram, showing the form of the ballot or the front
5 of the marking device or voting machine as it will appear on election day. The secretary of state
6 may develop multilingual sample ballots to be made available to election authorities.

115.423. [After the time fixed by law for the opening of the polls but] **Not more than**
2 **one hour** before the voting begins, the election judges shall open the ballot box and show to all
3 present that it is empty. The ballot box shall then be locked and the key kept by one of the
4 election judges. The ballot box shall not be opened or removed from public view from the time
5 it is shown to be empty until the polls close or until the ballot box is delivered for counting
6 pursuant to section 115.451. If voting machines are used, the election judges shall call attention
7 to the counter on the face of each voting machine and show to all present that it is set at zero.

115.433. After the voter's identification certificate has been initialed, two judges of
2 different political parties, or one judge from a major political party and one judge with no

3 political affiliation, shall, where paper ballots [or ballot cards] are used, initial the voter's ballot
4 or ballot card.

115.436. 1. In jurisdictions using paper ballots and electronic voting systems, when any
2 physically disabled voter within two hundred feet of a polling place is unable to enter the polling
3 place, two election judges, one of each major political party, shall take a ballot, equipment and
4 materials necessary for voting to the voter. The voter shall mark the ballot, and the election
5 judges shall place the ballot in an envelope[, seal it] and place it in the ballot box.

6 2. In jurisdictions using voting machines, when any physically disabled voter within two
7 hundred feet of a polling place is unable to enter the polling place, two election judges, one of
8 each major political party, shall take an absentee ballot to the voter. The voter shall mark the
9 ballot, and the election judges shall place the ballot in an envelope[, seal it] and place it in the
10 ballot box.

11 3. Upon request to the election authority, the election authority in any jurisdiction shall
12 designate a polling place accessible to any physically disabled voter other than the polling place
13 to which that voter would normally be assigned to vote, provided that the candidates and issues
14 voted on are consistent for both the designated location and the voting location for the voter's
15 precinct. Upon request, the election authority may also assign members of the physically
16 disabled voter's household and such voter's caregiver to the same voting location as the
17 physically disabled voter. In no event shall a voter be assigned under this section to a designated
18 location apart from the established voting location for the voter's precinct if the voter objects to
19 the assignment to another location.

115.439. 1. If paper ballots [or ballot cards] are used, the voter shall, immediately upon
2 receiving his ballot, go alone to a voting booth and vote his ballot in the following manner:

3 (1) When a voter desires to vote for a candidate, the voter shall place a [cross (X)]
4 **distinguishing** mark [in the square directly to the left of] **immediately beside** the name of the
5 candidate for which the voter intends to vote;

6 (2) [If the voter desires to vote for a person whose name does not appear on the ballot,
7 the voter may cross out a name which appears on the ballot for the office and write the name of
8 the person for whom he wishes to vote above or below the crossed-out name and place a cross
9 (X) mark in the square directly to the left of the crossed-out name.] If a write-in line appears on
10 the ballot, the voter may write the name of the person for whom he or she wishes to vote on the
11 line and place a [cross (X)] **distinguishing** mark [in the square directly to the left of]
12 **immediately beside** the name;

13 (3) If the ballot is one which contains no candidates, the voter shall place a [cross (X)]
14 **distinguishing** mark [in the square] directly to the left of each "yes" or "no" he desires to vote.

15

16 No voter shall vote for the same person more than once for the same office at the same election.

17 [2. For purposes of this section, a punch or sensor mark or any other mark clearly
18 indicating that the voter intends to mark that particular square shall be equivalent to a cross (X)
19 mark.

20 3. If voting machines are used, the voter shall, immediately upon direction by the judges,
21 go alone to a voting machine, close the curtain and vote in substantially the same manner
22 provided in subsection 1 of this section. Rather than placing cross (X) marks on the ballot,
23 however, the voter shall cause the designations to appear on the face of the voting machine, cast
24 any write-in votes and register his votes as directed in the instructions for use of the machine.

25 4.] 2. If the voter accidentally spoils his ballot or ballot card or makes an error, he may
26 return it to an election judge and receive another. The election judge shall mark "SPOILED"
27 across the ballot or ballot card and place it in an envelope marked "SPOILED BALLOTS". After
28 another ballot has been prepared in the manner provided in section 115.433, the ballot shall be
29 given to the voter for voting.

30 [5. The election authority may authorize the use of a sticker or other item containing a
31 write-in candidate's name, in lieu of a handwritten name. All such stickers and items used by
32 election authorities shall conform to rules and regulations promulgated by the secretary of state
33 regarding the form of such stickers and items. The secretary of state shall promulgate rules and
34 regulations to prescribe uniform specifications for the form of such stickers and items. If
35 authorized, such sticker or item shall contain a cross (X) mark, or other mark as described in
36 subsection 2 of this section, in the square directly left of the candidate's name and the office for
37 which the candidate is a write-in candidate. A write-in vote that does not meet the requirements
38 of this subsection which appears on a ballot shall not be counted pursuant to sections 115.447
39 to 115.525. In those jurisdictions using an electronic voting system which utilizes mark sense
40 or optical scan technology and if the election authority authorizes the use of stickers for
41 write-ins, such system shall be programmed to identify and separate those ballots which contain
42 an office in which write-in candidates are eligible to receive votes, and which contain less votes
43 than a voter is entitled to cast. In addition, such sticker shall be considered "printed matter" as
44 defined in subsection 8 of section 130.031, and as such shall contain the designation required by
45 subsection 8 of section 130.031.

46 6.] 3. Any rule or portion of a rule, as that term is defined in section 536.010, that is
47 created under the authority delegated in this section shall become effective only if it complies
48 with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028.
49 This section and chapter 536 are nonseverable and if any of the powers vested with the general
50 assembly pursuant to chapter 536 to review, to delay the effective date or to disapprove and

51 annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and
52 any rule proposed or adopted after August 28, 2002, shall be invalid and void.

115.449. 1. As soon as the polls close in each polling place using paper ballots, the
2 election judges shall begin to count the votes. If earlier counting is begun pursuant to section
3 115.451, the election judges shall complete the count in the manner provided by this section.
4 Once begun, no count shall be adjourned or postponed until all proper votes have been counted.

5 2. One counting judge, closely observed by the other counting judge, shall take the
6 ballots out of the ballot box one at a time and, holding each ballot in such a way that the other
7 counting judge may read it, shall read the name of each candidate properly voted for and the
8 office sought by each. As each vote is called out, the recording judges shall each record the vote
9 on a tally sheet. The votes for and against all questions shall likewise be read and recorded. If
10 more than one political subdivision or special district is holding an election on the same day at
11 the same polling place and using separate ballots, the counting judges may separate the ballots
12 of each political subdivision and special district and first read one set, then the next and so on
13 until all proper votes have been counted.

14 [3. After all of the proper votes on a ballot have been counted, the ballot shall be strung
15 on a wire or string in the order read. After all the ballots have been read and strung and after the
16 recording judges agree on the count, the wire or string shall be tied in a firm knot, and the knot
17 shall be sealed so that it cannot be untied without breaking the seal. Rejected and spoiled ballots
18 shall not be strung but shall be placed in separate containers marked "REJECTED" and
19 "SPOILED".

20 4.] 3. After the recording of all proper votes, the recording judges shall compare their
21 tallies. When the recording judges agree on the count, they shall sign both of the tally sheets, and
22 one of the recording judges shall announce in a loud voice the total number of votes for each
23 candidate and for and against each question.

24 [5.] 4. After the announcement of the vote, the election judges shall record the vote totals
25 in the appropriate places on each statement of returns. If any tally sheet or statement of returns
26 contains no heading for any question, the election judges shall write the necessary headings on
27 the tally sheet or statement of returns.

115.455. Election judges shall count votes on each question in the following manner:

2 (1) If a [cross (X)] **distinguishing** mark appears [in the square] immediately beside or
3 below the "YES", the question shall be counted as voted for. If a [cross (X)] **distinguishing**
4 mark appears [in the square] immediately beside or below the "NO", the question shall be
5 counted as voted against;

6 (2) If a [cross (X)] **distinguishing** mark appears [in the square] immediately beside or
7 below the "YES" and [in the square] immediately beside or below the "NO", the question shall
8 neither be counted as voted for nor as voted against.

 115.456. 1. [The election authority shall be responsible for ensuring that the standards
2 provided for in this subsection are followed when counting ballots cast using punch card voting
3 systems.

4 (1) Prior to tabulating ballots, all ballot cards shall be inspected by the election authority
5 for hanging chad and damaged ballots. Inspection of ballot cards shall be conducted using the
6 following guidelines:

7 (a) The election authority shall appoint a bipartisan team to inspect all ballots where a
8 question exists about the condition of a ballot or existence of a hanging chad;

9 (b) All ballot card inspections conducted under this section shall be conducted by
10 examining the ballot card from the back of the card;

11 (c) If a ballot is determined to be damaged, the bipartisan team shall spoil the original
12 ballot and duplicate the voter's intent on the new ballot, provided that there is an undisputed
13 method of matching the duplicate card with its original after it has been placed with the
14 remainder of the ballot cards from the precinct; and

15 (d) If a chad is determined to be hanging by two or less corners, it shall be removed prior
16 to being tabulated.

17 (2) In jurisdictions using punch card systems, a valid vote for a write-in candidate shall
18 include the following:

19 (a) A distinguishing mark in the square immediately preceding the name of the
20 candidate;

21 (b) The name of the candidate. If the name of the candidate as written by the voter is
22 substantially as declared by the candidate it shall be counted, or in those circumstances where
23 the names of candidates are similar, the names of candidates as shown on voter registration
24 records shall be counted; and

25 (c) The name of the office for which the candidate is to be elected.

26 (3) Whenever a hand recount of votes is ordered of punch card ballots, the provisions
27 of this subsection shall be used to determine voter intent.

28 2.] The election authority shall be responsible for ensuring that the standards provided
29 for in this subsection are followed when counting ballots cast using optical scan voting systems.

30 (1) Prior to tabulating ballots, all machines shall be programmed to reject blank ballots
31 where no votes are recorded or where an overvote is registered in any race.

32 (2) In jurisdictions using precinct-based tabulators, the voter who cast the ballot shall
33 review the ballot if rejected, if the voter wishes to make any changes to the ballot, or if the voter
34 would like to spoil the ballot and receive another ballot.

35 (3) In jurisdictions using centrally based tabulators, if a ballot is so rejected it shall be
36 reviewed by a bipartisan team using the following criteria:

37 (a) If a ballot is determined to be damaged, the bipartisan team shall spoil the original
38 ballot and duplicate the voter's intent on the new ballot, provided that there is an undisputed
39 method of matching the duplicate card with its original after it has been placed with the
40 remainder of the ballot cards from such precinct; and

41 (b) Voter intent shall be determined using the following criteria:

42 a. There is a distinguishing mark in the printed oval or divided arrow adjacent to the
43 name of the candidate or issue preference;

44 b. There is a distinguishing mark adjacent to the name of the candidate or issue
45 preference; or

46 c. The name of the candidate or issue preference is circled.

47 (4) In jurisdictions using optical scan systems, a valid vote for a write-in candidate shall
48 include the following:

49 (a) A distinguishing mark in the designated location preceding the name of the candidate;

50 (b) The name of the candidate. If the name of the candidate as written by the voter is
51 substantially as declared by the candidate it shall be counted, or in those circumstances where
52 the names of candidates are similar, the names of candidates as shown on voter registration
53 records shall be counted; and

54 (c) The name of the office for which the candidate is to be elected.

55 (5) Whenever a hand recount of votes of optical scan ballots is ordered, the provisions
56 of this subsection shall be used to determine voter intent.

57 [3.] 2. The election authority shall be responsible for ensuring that the standards provided
58 for in this subsection are followed when counting ballots cast using paper ballots.

59 (1) Voter intent shall be determined using the following criteria:

60 (a) There is a distinguishing mark in the square adjacent to the name of the candidate or
61 issue preference;

62 (b) There is a distinguishing mark adjacent to the name of the candidate or issue
63 preference; or

64 (c) The name of the candidate or issue preference is circled.

65 (2) In jurisdictions using paper ballots, a valid vote for a write-in candidate shall include
66 the following:

67 (a) A distinguishing mark in the square immediately preceding the name of the
68 candidate;

69 (b) The name of the candidate. If the name of the candidate as written by the voter is
70 substantially as declared by the candidate it shall be counted, or in those circumstances where
71 the names of candidates are similar, the names of candidates as shown on voter registration
72 records shall be counted; and

73 (c) The name of the office for which the candidate is to be elected.

74 (3) Whenever a hand recount of votes of paper ballots is ordered, the provisions of this
75 subsection shall be used to determine voter intent.

76 [4. When write-in stickers are used, the sticker shall contain the name of a candidate, the
77 office sought, and a distinguishing mark in the square immediately preceding the name of the
78 candidate and shall be approximately one inch by three inches in size with black print on a white
79 background. The sticker shall be placed by the voter on the write-in line designating the office
80 sought or the sticker shall be placed by the voter on the write-in line on the secrecy envelope.

81 5.] 3. Notwithstanding any other provision of law, a distinguishing mark indicating a
82 general preference for or against the candidates of one political party shall not be considered a
83 vote for or against any specific candidate.

115.493. The election authority shall keep all voted ballots, ballot cards, processed ballot
2 materials in electronic form and write-in forms, and all applications, statements, certificates,
3 affidavits and computer programs relating to each election for twelve months after the date of
4 the election. During the time that voted ballots, ballot cards, processed ballot materials in
5 electronic form and write-in forms are kept by the election authority, it shall not open or inspect
6 them or allow anyone else to do so, except upon order of a legislative body trying an election
7 contest, a court or a grand jury. After [twelve] **twenty-two** months, the ballots, ballot cards,
8 processed ballot materials in electronic form, write-in forms, applications, statements,
9 certificates, affidavits and computer programs relating to each election may be destroyed. If an
10 election contest, grand jury investigation or civil or criminal case relating to the election is
11 pending at the time, however, the materials shall not be destroyed until the contest, investigation
12 or case is finally determined.

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